

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Cottontail Plaza, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Corporation  
Franchise Tax under Article 9-A of the Tax Law for :  
the Years 1971 - 1973.

State of New York  
County of Albany

Kathy Pfaffenbach, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of January, 1983, she served the within notice of Decision by certified mail upon Cottontail Plaza, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Cottontail Plaza, Inc.  
c/o John M. Friedman  
1 Garden Rd.  
Scarsdale, NY 10583

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
24th day of January, 1983.

Kathy Pfaffenbach

Annice D. Hagelund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of  
Cottontail Plaza, Inc. :

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for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Corporation  
Franchise Tax under Article 9-A of the Tax Law for:  
the Years 1971 - 1973.

State of New York  
County of Albany

Kathy Pfaffenbach, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of January, 1983, she served the within notice of Decision by certified mail upon Michael J. Close the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael J. Close  
Palmer, Dewey, Ballantine, Bushby & Wood  
140 Broadway  
New York, NY 10005

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
24th day of January, 1983.

Kathy Pfaffenbach

Connie O'Haglund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

January 24, 1983

Cottontail Plaza, Inc.  
c/o John M. Friedman  
1 Garden Rd.  
Scarsdale, NY 10583

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Michael J. Close  
Palmer, Dewey, Ballantine, Bushby & Wood  
140 Broadway  
New York, NY 10005  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
COTTONTAIL PLAZA, INC.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Franchise Tax on a Business	:	
Corporation under Article 9-A of the Tax Law	:	
for the Years 1971 through 1973.	:	

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Petitioner, Cottontail Plaza, Inc., 1 Garden Road, Scarsdale, New York 10533, filed a petition for redetermination of a deficiency or for refund of franchise tax on a business corporation under Article 9-A of the Tax Law for the years 1971 through 1973 (File No. 11667).

A formal hearing was held before Herbert Carr, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 20, 1979 at 10:45 A.M. Petitioner appeared by Dewey, Ballantine, Bushby, Palmer & Wood, Esqs. (Michael J. Close and Neil Hahl, Esqs., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner was a "financial corporation" and a "banking corporation" as defined for purposes of Article 9-B and Article 32 of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Cottontail Plaza, Inc. ("Cottontail"), filed corporation tax returns under Articles 9-B and 32 of the Tax Law during the years in question. (Article 9-B applies to taxable years beginning or or before December 31, 1972; Article 32 applies to taxable years beginning or or after January 1,

1973. For purposes of the issues presented here, the provisions of the two laws are identical.)

2. By notices of estimated deficiency dated January 15, 1975, the Department of Taxation and Finance asserted against petitioner, additional tax plus interest as follows:

<u>Period Ending</u>	<u>Tax</u>	<u>Interest</u>	<u>Total</u>
12/31/71	\$4,533.50	\$ 770.70	\$ 5,304.20
12/31/72	9,109.91	1,252.61	10,362.52
12/31/73	9,109.91	569.37	9,679.28

3. Petitioner was incorporated under the laws of the State of New York on June 4, 1971.

4. The Chase Manhattan Bank, N.A. ("CMB") was a national banking association.

5. In May, 1971, Mr. John M. Friedman, an attorney-at-law, was contacted by attorneys for CMB and retained by them to organize Cottontail for the purpose of acquiring and holding title to certain real property in Huntington, Long Island, which CMB desired to use for the conduct of its banking business.

6. Friedman thereafter organized Cottontail, pursuant to the directions of CMB, and commenced to act as its president, sole director and attorney.

7. All 100 shares of stock were issued to Friedman for the sum of \$1,000.00, for which he was reimbursed by CMB. On July 21, 1971, Friedman delivered a certificate for the 100 shares of petitioner's stock to CMB, and signed an option letter and a blank stock power giving CMB the right to purchase the shares for \$1,000.00. The certificate, stock power and option letter were retained by CMB.

8. On July 21, 1971, title to the aforementioned real property was acquired by petitioner for the sum of \$5,312,161.00, of which \$796,000.00 cash was paid to the seller upon closing, the balance in the form of a purchase

money mortgage and notes. All funds paid to seller by petitioner were obtained by way of loans from CMB.

9. CMB advanced all funds for legal, operating and other expenses of petitioner, as well as real estate taxes and other expenses concerning the property. Friedman undertook no personal liability for loans from CMB to petitioner.

10. All officers were appointed and removed upon instructions from CMB.

11. CMB made all decisions relative to the affairs of petitioner, exercising direct control over the corporation. Friedman functioned solely as titular head of the corporation, and was at all times under the direct supervision of CMB.

12. Friedman received no dividends or other distributions with respect to stock in the petitioner.

13. Cottontail was included in the consolidated Federal corporation income tax returns of the Chase Manhattan Corporation and affiliated members.

#### CONCLUSIONS OF LAW

A. That section 209.1 of the Tax Law (Article 9-A) imposes a tax on "every domestic or foreign corporation, except corporations specified in subdivision four of this section" for the purposes of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property, or of maintaining an office in this state. Subdivision 4 of section 209.1 provides that corporations taxable under Article 9-B and Article 32 (among other articles) shall not be subject to tax under Article 9-A.<sup>1</sup>

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<sup>1</sup> Reference to Article 32 added L. 1972 Ch. 167 eff. April 25, 1972.

B. That section 219-q1 of the Tax Law (Article 9-B), in effect for taxable years ending on or before December 31, 1972, imposes a tax on every bank and savings and loan association organized under the authority of New York, all trust companies (with certain limited exceptions) and "[e]very other domestic financial corporation".

Section 1451(a) of the Tax Law (Article 32), effective for taxable years beginning on or after January 1, 1973, imposes a tax on the income of every "banking corporation" for the privilege of exercising its franchise or doing business in New York.

C. That the definition of a "financial corporation" under Article 9-B and the definition of a "banking corporation" under Article 32 are identical for purposes of the case at hand. Both section 219-p1 of Article 9-B and section 1452(a)(8) of Article 32 state that the respective terms include:

"...any corporation eighty percent or more of whose voting stock is beneficially owned by...a national banking association...provided the corporation whose voting stock is so owned is principally engaged in business which might be lawfully conducted by a...national banking association."

D. That pursuant to section 29 of the National Bank Act, 12 USC section 29, a national banking association may purchase, hold and convey real estate "as shall be necessary for its accommodation in the transaction of its business".

E. That more than 80 percent of petitioner's voting stock was beneficially owned by a national banking association and petitioner was principally engaged in business which might be lawfully conducted by a national banking association, i.e., the purchase and holding of real estate which the national banking association desired to use for the conduct of its banking business. Accordingly, petitioner meets the definitions of "financial corporation" under Article 9-B

of the Tax Law and "banking corporation" under Article 32 of the Tax Law and is not subject to tax under Article 9-A of the Tax Law.


F. That the petition of Cottontail Plaza, Inc. is granted and the notices of deficiency are cancelled.

DATED: Albany, New York

JAN 24 1983

STATE TAX COMMISSION

  
ACTING PRESIDENT

  
COMMISSIONER

  
COMMISSIONER